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Supreme Court of the United States

OCTOBER TERM, 1976

No. 76-394

ANNIE MARY TIMMONS, PETITIONER,

versus

THOMAS O. LAWTON, JR., ET AL., RESPONDENTS

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

BRIEF OF RESPONDENTS IN OPPOSITION

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OPINIONS BELOW

The opinion of the United States Court of Appeals for the Fourth Circuit is not yet reported and is set out as Appendix B to the Petition beginning at 22.[1] The opinion of the United States District Court for the District of South Carolina is also unreported and it appears as Appendix C to the Petition beginning at 25. The South Carolina Supreme Court's opinion is designated as Appendix D to the Petition beginning at 36 and is reported at 254 S. C. 378, 175 S. E. (2d) 855 (1970), *app'l dismissed and cert. denied,* 400 U. S. 986, 27 L. Ed. (2d) 435, 91 S. Ct. 460, *petition for rehearing denied,* 401 U. S. 949, 28 L. Ed. (2d) 233, 91 S. Ct. 922 (1971).

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[1] The Fourth Circuit's denial of the petitioner's motion for rehearing appears as Appendix A to the Petition beginning at 20.

JURISDICTION

The jurisdictional requisites are adequately set forth in the Petition.

QUESTIONS PRESENTED

1. Whether or not the petitioner is precluded by the doctrine of *res judicata* from bringing the instant action where previous State court litigation between the petitioner and the respondents' privy has decided the issues which the petitioner seeks to raise anew herein by way of the Civil Rights Act of 1871 [42 U. S. C. § 1983] and where this Court has already declined two opportunities to review the State court litigation?

2. Whether or not the petitioner was afforded an adequate opportunity in the State court litigation between the respondents' privy and her to raise all of the issues which she seeks to raise anew herein and did so raise those issues, thereby barring her instant action?

STATUTES INVOLVED

Section 1983 of Title 42 of the United States Code is set forth in the Petition. The pertinent provision of Act No. 562 of the 1969 South Carolina General Assembly amended the powers of the South Carolina Tricentennial Commission, a statutorily created state commission, to include the power of eminent domain as follows:

> (8) to do such other things as it deems necessary in order to carry out the provisions of this act, including the exercise of the power of eminent domain in the manner prescribed in Chapter 3, Title 25 of the 1962 Code; . . . . 56 STAT. Act No. 562 at 946 (1969).

STATEMENT OF THE CASE

The United States Court of Appeals for the Fourth Circuit summarily affirmed the dismissal of the petitioner's action by the United States District Court on the ground that it was barred by the doctrine of *res judicata*. [Appendix B to Petition at 24; Appendix C to Petition at 30 and 34.]

The petitioner's complaint alleged two causes of action against the respondents, all of whom are former members of the South Carolina Tricentennial Commission ("Commission").[2] In her first cause of action the petitioner alleged that in 1969 the respondents condemned real property belonging to her for use in the celebration of the three-hundredth anniversary of the State of South Carolina, which condemnation deprived her of her property without due process of law. [R. at 1-2 (Complaint, First Cause of Action, ¶¶ 2, 3 and 5).] Her second cause of action was purportedly brought pursuant to 42 U. S. C. § 1983 and alleged that the respondents' condemnation of her property, done under color of State law, deprived her of rights, privileges and immunities guaranteed by the United States Constitution. [R. at 2 (Complaint, Second Cause of Action, ¶¶ 2 and 3).]

The Commission's 1969 condemnation of the petitioner's real property had already been the subject of litigation in the State courts of South Carolina and had ultimately reached this Court, to wit: on June 6, 1969, the Commission, after attempting without success to negotiate with the petitioner for the purchase of her real property [R. at 26 (Motion for Summary Judgment, Aff., Lawton ¶¶ 8-9, Exhibit B)], commenced a condemnation action against her in the Court of Common Pleas for Richland

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[2] The Commission was created by the South Carolina General Assembly to commemorate the three-hundredth anniversary of the State. 49 STAT. Act. No. 925 at 2194 (1956).

County, South Carolina. The petitioner then brought an action against the Commission and the South Carolina Attorney General to enjoin the acquisition of her property. [Appendix D to Petition beginning at 36.] On appeal to the South Carolina Supreme Court, that Court decided, *inter alia,* that the petitioner had not been denied due process or equal protection of the laws under either the United States or South Carolina Constitutions by the Commission's condemnation of her property [Appendix D to Petition at 50-51], that the statute granting the power of eminent domain to the Commission was constitutional [Appendix D to Petition at 60], that there was a reasonable necessity for condemning her property [Appendix D to Petition at 41-43] and that her property was taken for legitimate public purposes [Appendix D to Petition at 45-50]. *Timmons v. South Carolina Tricentennial Commission, et al.* and *South Carolina Tricentennial Commission, et al. v. Timmons, et al.,* 254 S. C. 378, 175 S. E. (2d) 805 (1970) [Appendix D to the Petition beginning at 36.] The petitioner then appealed the decision of the State Supreme Court to this Court which dismissed it for want of jurisdiction and, then, treating the appeal as a petition for a writ of *certiorari,* also denied the petitioner review by *certiorari. Timmons v. South Carolina Tricentennial Commission, et al.* and *South Carolina Tricentennial Commission, et al. v. Timmons, et al.,* 400 U. S. 986, 27 L. Ed. (2d) 435, 91 S. Ct. 460 (1971). [R. at 26 (Answer, Letter from U. S. Supreme Court Clerk dated January 11, 1971, Exhibit 2); (Motion for Summary Judgment, Aff., Smith ¶ 3, Exhibit D)]. This Court also denied a petition for rehearing subsequently filed by the petitioner. 401 U. S. 949, 28 L. Ed. (2d) 233, 91 S. Ct. 922 (1971).[3] [R. at 26

[3] Earlier, on November 25, 1969, the petitioner had petitioned to remove the condemnation action to the United States District Court but the action was remanded to the state circuit court the next day. *Timmons v. South Carolina Tricentennial Commission, et al.,* Civil Action No. 69-1002 (Order dated November 26, 1969). The petitioner appealed that order to the United States Circuit Court of Appeals for the Fourth Circuit which dismissed her appeal [*Timmons v. South Carolina Tricentennial Commission, et al.,* No. 14,342 (Order filed February 17, 1970)]; this Court thereafter denied her petition for a writ of certiorari on that aspect of the action. 400 U. S. 833, 27 L. Ed. (2d) 65, 91 S. Ct. 66 (1970).

(Motion for Summary Judgment, Letter from U. S. Supreme Court Clerk dated March 1, 1971); (Motion for Summary Judgment, Aff., Smith ¶ 4, Exhibit D)].

On July 1, 1971, the Commission was statutorily abolished when its properties, powers, duties, personnel and funds were transferred to the South Carolina Department of Parks, Recreation and Tourism. 57 STAT. Act No. 610 at 1130 (1971).

ARGUMENT

I. The Decisions Below are Manifestly Correct.

Although the petitioner contends that the Court of Appeals and the District Court interpreted the elements of the doctrine of *res judicata* "in a manner inconsistent with the holdings of this Court" [Petition at 14], the trial court's dismissal of her action and the appellate court's summary affirmance of that dismissal based on the doctrine of *res judicata* are both correct and consistent. Moreover, as earlier noted in the Statement of the Case as well as in the opinions of both lower courts [Appendix B to the Petition at 23; Appendix C to the Petition at 28], this Court has already denied the petitioner review by *certiorari* as to the same occurrence which she complains of herein, *i.e.,* the condemnation of her real property by the Commission, once on the merits [400 U. S. 986, 27 L. Ed. (2d) 435, 91 S. Ct. 460, *petition for rehearing denied,* 401 U. S. 949, 28 L. Ed. (2d) 233, 91 S. Ct. 922 (1971)] and once on the removal of the State court litigation to the federal courts [400 U. S. 833, 27 L. Ed. (2d) 65, 91 S. Ct. 66 (1970)].

The doctrine of *res judicata* has been stated as follows:

> . . . a judgment 'on the merits' in a prior suit involving the same parties or their privies bars a second suit based on the same cause of action. *Lawlor v. Nat'l Screen Service Corp.*, 349 U. S. 322 at 326, 99 L. Ed. 1122, 75 S. Ct. 865 (1955).

See also, Angel v. Bullington, 330 U. S. 183, 91 L. Ed. 832, 67 S. Ct. 657 (1947).

First, then, for the doctrine of *res judicata* to preclude the petitioner's action, the petitioner must seek to relitigate questions previously adjudicated. A comparison of the holdings of the South Carolina Supreme Court in *Timmons v. South Carolina Tricentennial Commission, et al.* and *South Carolina Tricentennial Commission, et al. v. Timmons, et al.* [Appendix D to the Petition beginning at 36] with the issues raised in the petitioner's complaint [R. at 1-2 (Complaint)] reveals that they are in fact the same and the District Court so found [Appendix C to Petition at 29-30].

The second requirement of the *res judicata* doctrine as enunciated by Chief Justice Warren in *Lawlor* is that the subsequent litigation must be between the same parties, or their privies, as were involved in the first action. Obviously, the petitioner is identical with the Timmons litigant in the two State court actions and the respondents, as former members of the Commission, the other litigant in the two State court actions, are, as the lower courts declared [Appendix B to the Petition at 24; Appendix C to the Petition at 33], privies thereof. The individual members of the Commission are perforce "so identified in interest with" the Commission as to "represent the same legal right" [*United States v. California Bridge & Construction Co.*, 245 U. S. 337 at 341, 62 L. Ed. 332, 38 S. Ct. 91 (1917); *Fidelity Nat'l Bank of Greenville v. U. S. Fidelity & Guaranty Co.*, 207 S. C. 15 at 27, 35 S. E. (2d) 47, 162 A. L. R. 1003 (1945); *see also, Sunshine Anthracite Coal Co. v. Adkins,* 310 U. S. 381, 84 L. Ed. 1263, 60 S. Ct. 907 (1940); *cf., Litchfield v. Crane,* 123 U. S. 549, 31 L. Ed. 199, 8 S. Ct. 210 (1887)] since the Commission could act only through its individual members and the members could act against the petitioner's property only as the Commission. Therefore, once the Commission's legal right regarding the condemnation of the petitioner's real property was established, that determination necessarily established the legal right of the individual members thereof acting as the Commission. The two cannot be separated.[4]

The third requirement of the *res judicata* rule according to the *Lawlor* definition is that the second suit must be based upon the same cause of action as the previous litigation in order to bar further adjudication of the issues raised in the first suit. As hereinabove argued, all of the questions which the petitioner seeks to present herein [R. at 1-2 (Complaint)] were not only raised but

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[4] At this point we would advance the additional argument that the petitioner has failed to state a claim upon which relief can be granted for the reason that, while she has attempted to sue the former members of the Commission in their private, individual, personal capacities [Petition at 7 and 11] for the allegedly unconstitutional condemnation of her property, the condemnation authority, while it existed, reposed in the Commission itself and not in the individual members thereof. 56 STAT. Act No. 562 at 946 (1969). The District Court so stated in a finding from which the petitioner has not appealed, to wit:

> the 1968 [*sic*] amendment conferred upon the Commission, *not the individual members thereof*, the power of eminent domain, ... [Appendix C to the Petition at 27-28.] [Emphasis added.]

Moreover, the South Carolina Supreme Court had earlier held that the petitioner's property was condemned by the State itself. [Appendix D to the Petition at 45.] Clearly, then, the respondents neither privately, individually nor personally took any action against the petitioner of which she can complain or as to which she can be granted relief.

The respondents urge this additional ground for denial of the petitioner's petition for a writ of certiorari based on this Court's indisputable authority to consider all arguments in support of the lower courts' decisions whether reached or otherwise passed upon by them. *United States v. American Railway Express Co.*, 265 U. S. 425, 68 L. Ed. 1087, 44 S. Ct. 560 (1924); *United States v. Ballard*, 322 U. S. 78, 88 L. Ed. 1148, 64 S. Ct. 882 (1944); *cf., Jaffke v. Dunham*, 352 U. S. 280, 1 L. Ed. (2d) 314, 77 S. Ct. 307 (1957).

also determined in *Timmons v. Commission* and *Commission v. Timmons* [Appendix D to the Petition beginning at 36], State court actions which were based upon the same cause of action [*cf., United States v. "The Haytian Republic"*, 154 U. S. 118, 38 L. Ed. 930, 14 S. Ct. 992 (1894); *see also, Griggs v. Griggs*, 214 S. C. 177, 51 S. E. (2d) 622 (1949)] that she seeks to bring herein, *i.e.*, the taking of her real property by the Commission's exercise of eminent domain.

The District Court's dismissal of the petitioner's action on the ground of *res judicata* and the Court of Appeals' summary affirmance of that dismissal, then, are clearly correct and are not inconsistent with this Court's decisions. The petitioner has attempted to raise anew issues which have already been passed upon in prior suits, based on the same cause of action as is brought herein, by the South Carolina Supreme Court, whose determinations were left undisturbed by this Court. Thus, the matters involved in the instant action have already been fully adjudicated and settled and the petitioner is barred from bringing it against the former Commission members, who are in full privity with the Commission.

II. There is No Conflict of Decisions.

Although the petitioner states that this Court should grant *certiorari* to decide the issue of whether a proceeding in a State court can bar an action brought pursuant to 42 U. S. C. § 1983 [Petition at 18], the respondents can find no conflict among the circuits, and, indeed, the petitioner has not pointed to one, that the doctrine of *res judicata* does in fact prevent a plaintiff from "recasting an adjudicated issue in the form of an action under the Civil Rights Act." *Bricker v. Crane*, 468 F. (2d) 1228 at 1231 (1st Cir. 1972), *cert. denied*, 410 U. S. 930, 35 L. Ed. (2d) 592, 93 S. Ct. 1368 (1973). Numerous cases have held

that *res judicata* principles expressly apply to actions brought pursuant to 42 U. S. C. § 1983. *Chasteen v. Trans World Airlines, Inc.*, 520 F. (2d) 714 (8th Cir. 1975);[5] *Scroggin v. Schrunk*, 522 F. (2d) 436 (9th Cir. 1975); *Goodrich v. Supreme Court of State of South Dakota*, 511 F. (2d) 316 (8th Cir. 1975); *Mastracchio v. Ricci*, 498 F. (2d) 1257 (1st Cir. 1974); *Francisco Enterprises, Inc. v. Kirby*, 482 F. (2d) 481 (9th Cir. 1973), *cert. denied*, 415 U. S. 916, 39 L. Ed. (2d) 471, 94 S. Ct. 1413 (1974); *P. I. Enterprises, Inc. v. Cataldo*, 457 F. (2d) 1012 (1st Cir. 1972); *Bricker v. Crane, supra; Coogan v. Cincinnati Bar Association*, 431 F. (2d) 1209 (6th Cir. 1970); *Rhodes v. Meyer*, 334 F. (2d) 709 (8th Cir.), *cert. denied*, 379 U. S. 915, 13 L. Ed. (2d) 186, 85 S. Ct. 263 (1964); *cf., Moye v. City of Raleigh*, 503 F. (2d) 631 (4th Cir. 1974); *Hinish v. State of Maryland*, 303 F. Supp. 53 (Md. 1975). Once a state court has ruled on the federal constitutional questions involved in a case, that ruling cannot be challenged by the parties to that action in a subsequent civil rights action brought in a United States District Court. *Bricker v. Crane, supra; Taylor v. New York City Transit Authority*, 433 F. (2d) 665 (2nd Cir. 1970). Thus, a United States District Court cannot serve as a forum for review of state court decisions. *Deane Hill Country Club, Inc. v. City of Knoxville*, 379 F. (2d) 321 (6th Cir.), *cert. denied*, 389 U. S. 975, 19 L. Ed. (2d) 467, 88 S. Ct. 476 (1967).

The District Court discussed several of the cases hereinabove cited and, after declaring that the petitioner was "seeking to come under the broad umbrella of 42 U. S. C.

[5] The facts in the *Chasteen* case are strikingly similar to those involved herein. In that case, the United States Court of Appeals for the Eighth Circuit held that where the right of the city of Kansas City, Missouri, to condemn property had been litigated between the city and the plaintiff's assignor and had been determined adversely to the plaintiff's assignor, the plaintiff's § 1983 claim for damages against *members* of the city council and the mayor, *inter alia*, resting upon a relitigation of the city's right to condemn, was barred by *res judicata*.

§ 1983" [Appendix C to the Petition at 30], concluded that:

> In the present case Timmons originally sought relief in the State Court and thereafter appealed the State Court decision to the highest court in the land. Now she is only attempting to relitigate the matter or seeking an 'encore.' [Appendix C to the Petition at 34.] [6]

We submit, then, that the District Court was correct in refusing to allow the petitioner to begin all over again in another action involving the same issues before another forum in the same State. She cannot use the Civil Rights Act as a substitute for, or a supplement to, the right of appeal. *Cf., Coogan v. Cincinnati Bar Association, supra,* at 1211.[7]

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[6] The District Court also rejected the petitioner's argument, apparently reasserted herein [Petition at 6 and 15], that the State court action decided only the issue of an injunction by quoting from *Bricker v. Crane* as follows:

> Footnote 6 to the *Bricker* opinion states:
>
> > Appellant seeks to distinguish our decision in *P. I. Enterprises* by arguing that his constitutional claim was not, in fact, decided by the State Courts. He reaches this somewhat startling conclusion by characterizing the New Hampshire Court's determination of the State action question as decisive only of a preliminary injunction issue. It is, of course, crystal clear that a due process violation can never exist in the absence of state action, and that appellant's contention is, therefore, frivolous. [468 F. 2d at 1232.] [Appendix C to the Petition at 32.]

[7] As noted in footnote 4, *supra*, this Court has the authority to consider all grounds urged upon it by the respondents for denying the petitioner review by certiorari. In this connection, the respondents have asserted a "good faith" defense to the § 1983 action from the outset [R. at 3 (Answer, ¶ 23)], alleging that, at the time of the action complained of, they acted within the scope of their duties under the Constitution and laws of the State of South Carolina, within the range of discretion permitted holders of such offices under South Carolina law and in good faith. The uncontradicted affidavit of the Commission Chairman, submitted in support of the respondents' successful motion for summary judgment, discloses the same [R. at 26 (Motion for Summary Judgment, Aff., Lawton ¶ 11, Exhibit B)]. *See generally, Scheuer v. Rhodes*, 416 U. S. 232, 40 L. Ed. (2d) 90, 94 S. Ct. 1683 (1974).

III. The Petitioner Was Afforded an Adequate State Remedy.

Although the petitioner contends that the "state remedies in our situation were not adequate to protect [our] constitutional rights" [Petition at 18], she has utterly failed to indicate in what way the state remedy was inadequate.[8] To be sure, the state remedy might well have effected a result unsatisfactory to her inasmuch as *every* issue which she now seeks to raise again was decided against her in the State court litigation. But this Court, we submit, does not exist to provide disgruntled litigants an encore as to matters which have already been fully adjudicated. In *Angel v. Bullington, supra,* Mr. Justice Frankfurter wrote:

> After an adverse decision against Bullington [the petitioner] on a cause of action created by State law, Bullington wants to start all over again in another North Carolina court, albeit a federal court. The first litigation raised and adjudicated federal issues every one of which is again involved in the second suit. To allow such a second suit is to say that a federal right in issue in a State court evaporates because the State court calls it a State right and the litigant accepts the decision. If tolerated, our federal system would afford fine opportunities for needlessly multiplying litigation in this way. The doctrine of *res judicata* is a barrier against it. Litigation is the means for vindicating rights, but it may also involve unwarranted friction and waste. The doctrine of *res judicata* reflects the

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[8] The authority which the petitioner cites for the principle that the purpose and intent of 42 U. S. C. § 1983 is to provide a federal forum for the redress of a denial of constitutional rights, especially where there is no adequate state remedy, is clearly inapposite to the facts of her case. In *Battle v. Mullholland*, 439 F. (2d) 321 (5th Cir. 1971), a black man sought reinstatement to employment as a city police officer where, under Mississippi law, he could be dismissed from his employment without cause. The Court of Appeals held that the plaintiff was entitled to be heard in the district court as to whether his firing or forced resignation occurred for constitutionally impermissible reasons since he had no opportunity under state law to challenge the action.

refusal of law to tolerate needless litigation. Litigation is needless if, by fair process, a controversy has once gone through the courts to conclusion. [Citation omitted.] And it has gone through if issues that were or could have been dealt with in an earlier litigation are raised anew between the same parties. [Citation omitted.] 330 U. S. at 192-193.

CONCLUSION

For the foregoing reasons, the respondents submit that the petitioner's petition for a writ of *certiorari* should be denied.[9]

Respectfully submitted,

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[9] The Court should note that the petitioner, in her conclusion, erroneously prays that it grant the writ of certiorari "directed to the Supreme Court of South Carolina." [Petition at 19.] Of course, the writ, if granted, would issue to the United States Court of Appeals for the Fourth Circuit.